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EXAMINER

HARVEY, MINSUN OH

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 28

Application Number: 08/706,136
Filing Date: August 30, 1996
Appellant(s): Vandebelt et al.

Albert Peter Durigon
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed August 27, 2001..

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

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A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-12 and 14-19 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

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5,619,179

SMITH

4-1997

WO 83/01705

KRAMER

5-1983

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 to 12 and 14 to 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 5,619,179) in view of Kramer (WO 83/01705). This rejection is set forth in prior Office action, Paper No. 24.

(11) *Response to Argument*

On page 7, line 8 to page 8, line 16, the appellant has argued that "what is erroneously absent from the combination rejection of record for obviousness apparent statement of motivation--the naked conclusion that 'applicant's argument is not persuasive because Smith as modified with Kramer does disclose claimed invention'-- is any indication whatsoever where the motivation is to be found from the references to be combined, let alone what the motivation is, that would clearly lead one skilled in the art to combine Kramer with Smith to provide the invention of the claimed combinations as a whole of the independent claims of the present invention". The Examiner disagrees with the appellant because motivation of substituting a collectable sound card of Kramer with a memory of Smith would have been obvious because as described by Kramer, using a collectable sound card would allow retrieval of the data from one or more of the cards, for supply to sound reproduction means.

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On page 8, line 17 to page 10, line 3, the appellant's have argued that "Kramer reference does not disclose 'a system which can provide extra sound entertainment from a collectible sound card' ". The appellant's argument is not persuasive because as described above, Kramer has disclosed using a plurality of cards for retrieval of a data from one or more cards (see page 3). Therefore, combining a collectable sound cards with a sound generator of Smith would have been obvious because more different choices of sound signals could have been accessed by a user.

On page 11, line 18 to page 12, line 2, the appellant has argued that "the special sound effects generator of Smith and the digital processing and storage card and cooperative sound reproduction unit of Kramer, each taken as a whole and all taken together, fail to teach or even remotely suggest the recited collectible sound card having prerecorded sounds therein and a digital sound relaxation and noise masking device operable in built-in and sound card replay modes cooperative therewith to make the sounds of the collectible sound card available for replay by the sound controller thereof in addition to the built-in sounds of the digital sound relaxation and noise masking device of the claimed combination as a whole of the independent claims 1 and claim 4 of the present invention". The appellant's argument is not persuasive because Smith discloses electronic sound generators which are used for personal entertainment, recreation, relaxation with recorded sounds. Kramer discloses that it has been well known in the art to provide a system which can provide extra sound entertainment from a collectable

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sound card. Given above, it would have been obvious to combine Kramer's teaching with Smith.

On page 12, lines 4 to 13, the appellant has argued that "since the combination rejection of record for obviousness fails to teach or suggest a collectable sound card and digital sound relaxation device cooperative therewith to play sounds selected from the sound card in sound card mode and to play internal sounds in built-in sounds mode, a fortiori, there is no teaching therein, howsoever slight, of the recited sound card selector switch for reassigning sound selector switches between the sound card and built-in sounds of the claimed combination as a whole of the dependent claim 3". As described above, the appellant's argument is not persuasive.

On page 12, lines 15 to 29, the appellant has argued that "whereas the Smith special effect module 20 is operable in LOCK mode to synthesize pseudo-stereo effects and is operable in UNCLOCK mode to synthesize drifting/migrating sound effects, while the Kramer sound reproduction unit is only operable to play sounds programmed on the bubble memory of its digital processing and storage card absent which it has no sounds to play, it is respectfully submitted that the special sound effects generator of Smith and digital processing and storage card sound reproduction unit of Kramer, each taken as a whole and all taken together, fail to teach or even remotely suggest the recited digital sound relaxation and noise and noise masking device operable in built-in and sound card replay modes adapted to mate with a collectible sound card.....". The appellant's argument is not persuasive because Kramer reference does

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disclose retrieving of the data from one or more of the cards and supply the data to sound reproduction means (see page 3, lines 20 to 15).

On page 13, lines 5 to 24, the appellant has argued that "whereas the Smith special effects module 20 produces pseudo-stereo and drifting/migrating sound effects by introducing time offsets into the start times and/or wandering clock rates into the loop sounds played by its digital synthesizer chips but does not 'show a collectable sound card' associated therewith, while the digital processing and storage card of Kramer is only adapted for a sound effects generator of Smith that simply has no sound card and the digital processing and storage card adapted for the sound reproduction unit of Kramer that otherwise has no sounds to play,.....". The appellant's argument is not persuasive because since Smith has disclosed sound relaxation and noise masking system and Kramer has disclosed it is well known to provide a system which can provide extra sound entertainment from a collectable sound card, it would have been obvious to combine two teachings because more different choices of sound signals could be accessed by an user.

On page 13, line 26 to page 14, line 16, the appellant has argued that "the special sound effects generator of Smith and the digital processing and storage card of Kramer, each taken as a whole and all taken together, fail to teach or even remotely suggest the recited 'sound bite' format storage of the dependent claims 9 and 12 and such 'sound bite' format storage of the dependent claim 19 that calls for random selection of different complete-in-themselves versions of the same intermittent sound and playback thereof at random times of

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the present invention". The appellant's argument is not persuasive because as described above, when storing digital sounds in a memory, it is well known in the art to store digital sounds in a sound bite type format.

This is regarding the Inventor's Declaration:

On page 15, lines 17 to 25, the appellant has argued that "as evidenced by paragraph 8 thereof, in one of its inventive aspects, the claimed combinations as a whole of the independent claims 1 and 4 of the above-captioned invention call for, among other things, a collectible sound card, and a digital sound relaxation and noise masking device, cooperative therewith, in another of its inventive aspects, the claimed combinations as a whole of the independent claims 5 and 15 call for, among other things, a digital sound relaxation and noise masking device adapted to mate with a collectible sound card, and in another of its inventive aspects, the claimed combinations as a whole of the independent claims 10 and 17 call for, among other things, a collectible sound card for use with a digital sound relaxation and noise masking device". As described above, Smith as modified do disclose independent claims 5 and 15 which call for, a digital sound relaxation and noise masking device adapted to mate with a collectible sound card, and in another of its inventive aspects, the claimed combinations as a whole of the independent claims 10 and 17 which call for, a collectible sound card for use with a digital sound relaxation and noise masking device.

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On page 16, lines 16 to 25, the appellant has argued that "since the heretofore known digital sound relaxation and noise masking devices only included a limited selection of built-in sounds, the collectible sound cards of the improved-customizability digital sound relaxation and noise masking devices of the present invention provide customers with an expanded selection of sounds from which to choose, thereby increasing the probability that owners can find their ideal sound(s)". As described above, since it is well known in the art that a collectable sound card is used for being able to store/retrieve many different data, it would have been obvious to combine Kramer with Smith because an user could retrieve many different data.

CONCLUSION:

The examiner believes Smith as modified with Kramer discloses customizability digital sound relaxation devices as claimed.

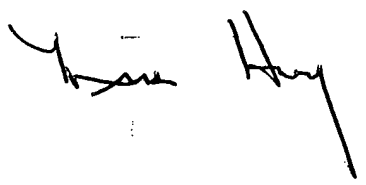
The appellant has not answer the examiner's comment regarding the applicant's signature on Final Rejection (see paper# 24, 1st paragraph). Examiner has pointed out to the appellant that the applicant's signature has been different on papers which were received before CPA was filed and when and after CPA was filed. The examiner would like to point out that it is confusing whether both signatures are the applicant's signature.


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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

MOH
November 19, 2001


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